

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
July 25, 2006 Session

**STATE OF TENNESSEE v. DONALD BRADFORD SLAGLE, JR.**

**Direct Appeal from the Circuit Court for Loudon County  
No. 10701 E. Eugene Eblen, Judge**

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**No. E2005-02884-CCA-R3-CD - Filed October 24, 2006**

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A Loudon County jury found the defendant, Donald Bradford Slagle, Jr., guilty of fourth offense driving under the influence (DUI), fourth offense driving on a revoked license, and violating the implied consent law. The trial court imposed a one-year sentence for DUI, and eleven months, twenty-nine days for driving on a revoked license, all to be served in a community corrections program following service of 150 days in confinement. The defendant's driving privileges were also revoked. On appeal, the defendant argues that: (1) the trial court erred in failing to give his requested special jury instruction, and (2) the evidence was insufficient to sustain his DUI conviction. Following our review of the record and the parties' briefs, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed**

J.C. McLIN, J., delivered the opinion of the court, in which DAVID G. HAYES and ROBERT W. WEDEMEYER, JJ., joined.

Steven B. Ward, Madisonville, Tennessee, for the appellant, Donald Bradford Slagle, Jr.

Paul G. Summers, Attorney General and Reporter; David E. Coenen, Assistant Attorney General; Scott McCluen, District Attorney General; and Frank Harvey, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**BACKGROUND**

The defendant was indicted for fourth offense DUI, fourth offense driving on a revoked license, driving without a license, and violating the implied consent law. At trial, Officer Jason Smith of the Loudon County Sheriff's Department testified that he was "patrolling the highways and byways of Loudon County" during the early morning hours of June 16, 2002. Officer Smith stated that he received a call from dispatch to be on the lookout for a black jeep with a certain license plate number. Officer Smith recalled that he spotted the black jeep around 2:30 a.m. on Highway 11 in

Loudon County, and he began to follow the vehicle. Officer Smith explained that “[r]ight after I got to him he crossed over into the white line once, and then shortly thereafter he went over it again, and it was right after that I activated my blue lights.”

Officer Smith testified that after he activated his lights, the driver, identified as the defendant, traveled for about a half mile before turning into a pizzeria in Knox County. The defendant then pulled into a parking space at an angle with one wheel up on the curb. When Officer Smith approached the vehicle, he noticed that the defendant had his hands clenched on the steering wheel. Officer Smith asked the defendant a few questions, but the defendant just looked straight ahead and did not respond. Officer Smith then asked the defendant if he could talk, and the defendant responded “yeah, I can talk.”

Officer Smith testified that he asked the defendant for his driver’s license, and the defendant said his son had it. Officer Smith then asked the defendant where his son was, and the defendant said his son was in the back of the jeep. Officer Smith observed that the back of the jeep was full of clothes and other items but no one was in the back. When Officer Smith informed the defendant that his son was not in the jeep, the defendant replied that he must have left his son behind. During this conversation, Officer Smith “could smell an odor of alcoholic beverage” about the defendant, and noticed the defendant’s eyes were bloodshot. Officer Smith asked the defendant to step out of his car and noticed that “he was stumbling, and he had trouble standing. He swayed a lot.” Officer Smith stated that the defendant admitted “he’d had a few beers.”

Officer Smith testified that the defendant refused to submit to a breathalyzer test and signed a form stating that he was refusing the test. Officer Smith said that the defendant was uncooperative and would sometimes refuse to do certain things or answer certain questions. Officer Smith also said that he took the defendant into custody after Officer Billy Hall conducted a number of field sobriety tests on the defendant.

On cross-examination, Officer Smith said that the defendant did not look asleep when he approached the jeep, but instead, the defendant’s eyes were open. Officer Smith admitted that the defendant appeared confused, but he felt that the defendant was extremely intoxicated based on his answers to certain questions. Officer Smith said that the defendant never fell asleep in the patrol car or at the jail, and at the scene, was always standing with his eyes open.

Officer Billy Hall of the Loudon County Sheriff’s Office testified that he was certified and trained in the administration of field sobriety tests. Officer Hall stated that he administered the field sobriety tests to the defendant. Officer Hall noted that the defendant was very unsteady on his feet and did not keep his balance during the walk and turn test. Officer Hall also conducted the finger to nose test, during which the defendant missed four attempts to touch the tip of his nose. Officer Hall noted that the defendant swayed a lot during the test. Officer Hall stated that his general observation of the defendant that night was that “he was very cocky, and what questions he did answer, they were very short and brief[.]”

On cross-examination, Officer Hall explained that he felt the defendant was cocky based on the way he answered the questions, but he admitted that the defendant was not uncooperative because he did perform some of the field sobriety tests. After the administration of the field sobriety tests, Officer Hall stated that in his opinion the defendant was impaired.

The parties stipulated that when the defendant was stopped, his driver's license had been revoked and he did not have a driver's license with him at the time of the stop.

The defendant testified that in June of 2002 he suffered from severe depression, anxiety attacks, and inability to sleep for which he was prescribed Ambien. The defendant said that he took the Ambien every night and it helped him sleep. However, he explained that he started experiencing certain side-effects, such as seeing things out of the corner of his eye and waking up outside in his front yard wearing his underwear. He said that he thought he was going crazy.

In regard to the night at issue in this case, the defendant stated that, in his mind, he was taking his son on a sunny day to get a pizza. He said that "to my knowledge, these officers are telling the truth about what they saw, what they thought they saw, how I acted, or whatever. I cannot dispute anything they're saying, because basically, I wasn't there." The defendant stated he did not remember the events of June 16, 2002 and had never seen Officer Smith. He recalled that he had watched television, taken his Ambien, went to bed, and "then the next thing I know I'm somewhere else." The defendant testified that his doctors have since taken him off Ambien due to the bad side-effects.

On cross-examination, the defendant admitted that his health care providers as well as the labels on the prescription bottles warned him to not mix alcohol with prescription drugs. He acknowledged that he had been warned that mixing alcohol with prescription drugs could affect his functioning and ability to operate a motor vehicle. The defendant said that he could not disagree with Officer Hall's testimony that he smelled alcohol on the defendant or that the defendant had admitted to having a few drinks. He admitted that he took his prescription drugs that evening, and apparently drank alcohol, got behind the wheel of his vehicle, drove on a public road and interacted with the officers. However, the defendant maintained that he did not consciously get behind the wheel of his vehicle.

Dr. Bertha David, a psychiatrist at Peninsula Behavioral Health, testified that she treated the defendant for depression, anxiety, and alcohol dependence. Dr. David said that she prescribed the defendant Ambien for his insomnia. Dr. David stated that Ambien usually "does not have too many residual side effects. But infrequently some people do experience side effects, such as confusion, [or] memory problems." Dr. David explained that the memory problems, called anterograde amnesia, could result in a person doing things in an altered state of consciousness that the person does not remember doing later. Dr. David said that the defendant reported incidents of driving a car and cooking without remembering what he had done. Dr. David further stated that she took the defendant off Ambien in September of 2002. Dr. David stated that sometime after she took the defendant off the Ambien, he reported an incident where he had apparently cooked without

remembering that he had cooked. However, Dr. David said she was not sure when that incident actually occurred.

On cross-examination, Dr. David stated that in April of 2002, the defendant told her that he had taken Benadryl and prednisone for poison ivy and had “gone to his car and drove to his sister’s house, and had no recollection of that.” Dr. David testified that she treated the defendant for a history of alcohol dependence, but she was not aware whether he was using alcohol during the time she treated him. Dr. David said that patients must be very cautious not to drink alcohol while taking prescription drugs such as Ambien because doing so can be dangerous. Dr. David acknowledged that alcoholics can have blackout spells where they do certain things but later do not remember what they did. Dr. David testified that the first time the defendant told her about the June 16, 2002 driving episode was in February of 2003.

Following the trial, the jury convicted the defendant as charged.<sup>1</sup> As a result of his DUI conviction, the trial court revoked the defendant’s license for five years and ordered the defendant to serve one year in a community corrections program following the service of 150 days, to be served consecutive to his time in case number 10727. For his driving on a revoked license conviction, the defendant was sentenced to eleven months, twenty-nine days in a community corrections program following service of forty-five days, concurrent with the time on the DUI conviction. The trial court revoked the defendant’s license for one year for violating the implied consent law.

## **ANALYSIS**

The defendant raises two issues on appeal. First, he challenges the trial court’s failure to give his requested special jury instruction. Second, he challenges the sufficiency of the convicting evidence. We note that the defendant raises these allegations only in regard to his DUI conviction.

### **Jury Instruction**

The defendant argues that the trial court erred by not giving his requested special jury instruction that one must voluntarily place oneself behind the wheel of the vehicle in order to be found guilty of DUI. The defendant relies on *State v. Turner*, 953 S.W.2d 213, 215 (Tenn. Crim. App. 1996), as support for his argument. The defendant, however, failed to raise this issue in his motion for new trial. Tennessee Rule of Appellate Procedure 3(e) states “in all cases tried by a jury, no issue presented for review shall be predicated upon error in . . . jury instructions granted or refused . . . unless the same was specifically stated in a motion for a new trial; otherwise such issues will be treated as waived.” As such, the issue is waived.

### **Sufficiency**

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<sup>1</sup> The driving without a license charge was dismissed.

The defendant argues that the evidence was insufficient to convict him of DUI in that there was no proof he voluntarily placed himself behind the wheel of his vehicle. The defendant submits that the last thing he remembers was sitting down at his house after taking Ambien.

We begin our review with the well-established rule that once a jury finds a defendant guilty, his or her presumption of innocence is removed and replaced with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). Therefore, on appeal, the convicted defendant has the burden of demonstrating to this court why the evidence will not support the jury's verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). To meet this burden, the defendant must establish that no "rational trier of fact" could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003). In contrast, the jury's verdict approved by the trial judge accredits the state's witnesses and resolves all conflicts in favor of the state. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). The state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. *Carruthers*, 35 S.W.3d at 558. Questions concerning the credibility of the witnesses, conflicts in trial testimony, the weight and value to be given the evidence, and all factual issues raised by the evidence are resolved by the trier of fact and not this court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). We do not attempt to re-weigh or re-evaluate the evidence. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006). Likewise, we do not replace the jury's inferences drawn from the circumstantial evidence with our own inferences. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002).

Tennessee Code Annotated section 55-10-401(a)(1) provides:

It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises which is generally frequented by the public at large, while: [u]nder the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system[.]

The defendant asserts that his actions were involuntary because Ambien made him unconsciously drink alcohol, get behind the wheel of his jeep, and drive. However, other than the defendant's testimony, there was no proof that he acted unconsciously. At no time did Dr. David testify that it was her medical opinion that the defendant's actions were involuntary. Instead, Dr. David mentioned that periods of amnesia were an infrequent side-effect of Ambien, and she would not agree that people who experience amnesia were not conscious. Dr. David stated that those people were in a state of altered consciousness. Dr. David went on to explain the dangers of mixing alcohol with prescription drugs and noted that some alcoholics have blackout spells where they do things they do not remember later. The defendant's argument basically boils down to a credibility determination. It was for the jury to assess the credibility of the witnesses, and the jury obviously

chose to discredit the defendant's testimony that his action of driving under the influence was an involuntary side-effect of taking Ambien. Along the same lines, it was the jury's prerogative to infer that the defendant could not remember the events because he had perhaps experienced an alcoholic-blackout. We will not second-guess the jury's credibility determinations or the jury's inferences drawn from the evidence.

Furthermore, the evidence was sufficient to sustain the defendant's conviction for DUI. In the light most favorable to the state, the evidence shows that Officer Smith noticed the defendant's vehicle cross over the white line on more than one occasion. Officer Smith activated his blue lights in an attempt to stop the defendant, but the defendant traveled on for approximately a half mile before coming to a stop at an angle with one of his tires up on a curb. Officer Smith smelled the odor of alcohol on the defendant and noticed that the defendant's eyes were bloodshot. Officer Smith recalled that the defendant stumbled, had trouble standing, and swayed a lot. The defendant admitted to Officer Smith that he had a few beers. Officer Hall conducted field sobriety tests on the defendant and determined that the defendant was impaired. Therefore, the evidence presented by the state was sufficient to convict the defendant of driving under the influence. The defendant is not entitled to relief on this issue.

### **CONCLUSION**

Upon review, we conclude that the defendant is not entitled to relief on either issue presented. Therefore, the judgments of the Loudon County Circuit Court are affirmed.

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J.C. McLIN, JUDGE